

Memorandum for the Secretary of Defense

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 301 of title 3, United States Code, I hereby delegate to you: (a) the functions and authority of the President contained in section 315 of title 32, United States Code, to permit a commissioned officer of the Regular Army or Regular Air Force to accept a commission in the Army National Guard or the Air National Guard, as the case may be, terminable at your discretion, without prejudicing his or her rank and without vacating his or her regular appointment; and (b) the functions and authority of the President contained in section 325 of title 32, United States Code, to authorize the service of an officer of the Army National Guard or the Air National Guard on active duty without relieving that officer from duty in the National Guard of his or her State, or of the Commonwealth of Puerto Rico, Guam, or the United States Virgin Islands, or the District of Columbia and to give such authorization in advance for the purpose of establishing the succession of command of a unit.

This delegation of functions and authority supersedes and replaces the July 23, 2004, delegation to the Secretary of Defense of the functions and authority of the President contained in section 325 of title 32, United States Code.

You are further authorized and directed to make necessary arrangements to fund the exercise of these functions and authority from the proper appropriation, prescribe regulations to implement these functions and authority, and to publish this memorandum in the Federal Register.

BARACK OBAMA.

§ 316. Detail of members of Army National Guard for rifle instruction of civilians

The President may detail officers and non-commissioned officers of the Army National Guard to duty as instructors at rifle ranges for the training of civilians in the use of military arms.

(Aug. 10, 1956, ch. 1041, 70A Stat. 605.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
316	32:183.	June 3, 1916, ch. 134, §113 (3d sentence), 39 Stat. 211.

The word “civilians” is substituted for the word “citizenry”. The word “capable” is omitted as surplusage.

§ 317. Command during joint exercises with Federal troops

When any part of the National Guard that is not in Federal service participates in an encampment, maneuver, or other exercise for instruction, together with troops in Federal service, the command of the post, air base, or other place where it is held, and of the troops in Federal service on duty there, remains with the officers in Federal service who command that place and the Federal troops on duty there, without regard to the rank of the officers of the National Guard not in Federal service who are temporarily participating in the exercise.

(Aug. 10, 1956, ch. 1041, 70A Stat. 605.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
317	32:72.	June 3, 1916, ch. 134, §95, 39 Stat. 207.

The words “not in Federal service” are inserted to show that the revised section applies only to joint exercises involving National Guard troops not in Federal service, since 32:72 was enacted before the establishment of the National Guard of the United States, in 1933. The words “troops in Federal service” are substituted for the words “troops of the United States”. The words “officers in Federal service who command” are substituted for the words “commander of the United States troops”. The words “post, air base, or other place” are substituted for the words “military post, or reservation, or elsewhere”. The words “that place and the Federal troops on duty there” are substituted for the words “there or elsewhere”. The words “including outdoor target practice” and “field and coast defense instruction” are omitted as surplusage.

USUAL AND CUSTOMARY ARRANGEMENT

Pub. L. 112-81, div. A, title V, §515(c), Dec. 31, 2011, 125 Stat. 1395, provided that:

“(1) DUAL-STATUS COMMANDER.—When the Armed Forces and the National Guard are employed simultaneously in support of civil authorities in the United States, appointment of a commissioned officer as a dual-status commander serving on active duty and duty in, or with, the National Guard of a State under sections 315 or 325 of title 32, United States Code, as commander of Federal forces by Federal authorities and as commander of State National Guard forces by State authorities, should be the usual and customary command and control arrangement, including for missions involving a major disaster or emergency as those terms are defined in section 102 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5122). The chain of command for the Armed Forces shall remain in accordance with sections 162(b) and 164(c) of title 10, United States Code.

“(2) STATE AUTHORITIES SUPPORTED.—When a major disaster or emergency occurs in any area subject to the laws of any State, Territory, or the District of Columbia, the Governor of the State affected normally should be the principal civil authority supported by the primary Federal agency and its supporting Federal entities, and the Adjutant General of the State or his or her subordinate designee normally should be the principal military authority supported by the dual-status commander when acting in his or her State capacity.

“(3) RULE OF CONSTRUCTION.—Nothing in paragraphs (1) or (2) shall be construed to preclude or limit, in any way, the authorities of the President, the Secretary of Defense, or the Governor of any State to direct, control, and prescribe command and control arrangements for forces under their command.”

[§§ 318 to 321. Repealed. Pub. L. 99-661, div. A, title VI, § 604(f)(2)(A), Nov. 14, 1986, 100 Stat. 3878]

Section 318, acts Aug. 10, 1956, ch. 1041, 70A Stat. 605; Sept. 2, 1958, Pub. L. 85-861, §33(c)(1), 72 Stat. 1567; Sept. 7, 1962, Pub. L. 87-649, §8(a), 76 Stat. 495, related to compensation for members of National Guard for disablement during training.

Section 319, act Aug. 10, 1956, ch. 1041, 70A Stat. 605, related to compensation for members of National Guard for disablement during training when not covered by section 318 of this title.

Section 320, act Aug. 10, 1956, ch. 1041, 70A Stat. 606, related to hospitalization ordered by Secretary of Army or Air Force for members of National Guard.

Section 321, acts Aug. 10, 1956, ch. 1041, 70A Stat. 606; Sept. 2, 1958, Pub. L. 85-861, §2(10), 72 Stat. 1544; Sept. 7, 1962, Pub. L. 87-649, §8(b), 76 Stat. 495, related to death gratuities for members of National Guard.

EFFECTIVE DATE OF REPEAL

Repeal applicable with respect to persons who, after Nov. 14, 1986, incur or aggravate an injury, illness, or disease or die, see section 604(g) of Pub. L. 99-661, set out as an Effective Date of 1986 Amendment note under section 1074a of Title 10, Armed Forces.

§ 322. Discharge of enlisted members

(a) An enlisted member of the National Guard shall be discharged when—

- (1) he becomes 64 years of age; or
- (2) his Federal recognition is withdrawn.

(b) An enlisted member who is discharged from the National Guard is entitled to a discharge certificate similar in form and classification to the corresponding certificate prescribed for members of the Regular Army or the Regular Air Force, as the case may be.

(c) In time of peace, an enlisted member of the National Guard may be discharged before his enlistment expires, under such regulations as may be prescribed by the Secretary of the Army or the Secretary of the Air Force, as the case may be.

(Aug. 10, 1956, ch. 1041, 70A Stat. 606.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
322(a)	32:154 (last par., less 1st 26, and last 26, words).	June 3, 1916, ch. 134, §72; restated June 4, 1920, ch. 227, subch. I, §40; restated June 15, 1933, ch. 87, §10, 48 Stat. 157; July 9, 1952, ch. 608, §806(d), 66 Stat. 507.
322(b)	32:125 (less last 27 words).	June 3, 1916, ch. 134, §110 (last par., less 1st 30, and last 25, words); restated Sept. 22, 1922, ch. 423, §6 (last par., less 1st 30, and last 137, words); restated May 12, 1928, ch. 529 (less 1st 30, and last 25, words), 45 Stat. 500.
322(c)	32:125 (last 27 words).	

Subsection (a) is substituted for 32:154 (last par., less 1st 26, and last 26, words) to reflect an opinion of the Judge Advocate General of the Army (JAGA 1953/9033, 3 Dec. 1953).

In subsection (b), the words “is entitled to a discharge certificate similar in form and classification to the corresponding certificate” are substituted for the words “shall receive a discharge in writing in such form and with such classification as is or shall be”. The words “service in” are omitted as surplusage.

In subsection (c), the words “his enlistment expires” are substituted for the words “the expiration of terms of enlistment”.

§ 323. Withdrawal of Federal recognition

(a) Whenever a member of the National Guard ceases to have the qualifications prescribed under section 301 of this title or ceases to be a member of a federally recognized unit or organization of the National Guard, his Federal recognition shall be withdrawn.

(b) Under regulations to be prescribed by the President, the capacity and general fitness of an officer of the National Guard for continued Federal recognition may be investigated at any time by an efficiency board composed of commissioned officers of—

- (1) the Regular Army or the Army National Guard of the United States, or both, who out-

rank him and who are detailed by the Secretary of the Army, if he is a member of the Army National Guard; or

- (2) the Regular Air Force or the Air National Guard of the United States, or both, who outrank him and who are detailed by the Secretary of the Air Force, if he is a member of the Air National Guard.

If the findings of the board are unfavorable to the officer and are approved by the President, his Federal recognition shall be withdrawn.

(c) If a member of the Army National Guard of the United States or the Air National Guard of the United States is transferred to the Army Reserve or the Air Force Reserve, as the case may be, under section 12105, 12213(a), or 12214(a) of title 10, his Federal recognition is withdrawn.

(d) The Federal recognition of a reserve commissioned officer of the Army or the Air Force who is—

- (1) federally recognized as an officer of the National Guard; and
- (2) subject to involuntary transfer to the Retired Reserve, transfer to an inactive status list, or discharge under chapter 1407, 1409, or 1411 of title 10;

shall, if not sooner withdrawn, be withdrawn on the date of such involuntary transfer or discharge.

(Aug. 10, 1956, ch. 1041, 70A Stat. 607; Pub. L. 85-861, §§2(11), 33(c)(2), Sept. 2, 1958, 72 Stat. 1546, 1567; Pub. L. 103-337, div. A, title XVI, §§1630(2), 1676(a)(3), Oct. 5, 1994, 108 Stat. 2964, 3019.)

HISTORICAL AND REVISION NOTES
1956 ACT

Revised section	Source (U.S. Code)	Source (Statutes at Large)
323(a)	32:154 (last 26 words of last par.).	June 3, 1916, ch. 134, §76 (1st sentence, and 1st 24 words of 2d sentence); restated June 15, 1933, ch. 87, §13 (1st sentence, and 1st 24 words of 2d sentence), 48 Stat. 158.
323(b)	32:115 (1st sentence, and 1st 24 words of 2d sentence).	June 3, 1916, ch. 134, §110 (last 25 words of last par.); restated Sept. 22, 1922, ch. 423, §6 (last 137 words of last par.); restated May 12, 1928, ch. 529 (last 25 words), 45 Stat. 501.
323(c)	50:1116 (last 15 words of 1st sentence).	July 9, 1952, ch. 608, §706 (last 15 words of 1st sentence), 66 Stat. 503.

In subsection (a) the words “ceases to have the qualifications prescribed under section 300 of this title” are substituted for 32:154 (last 26 words of last par.), since it is implicit that a member who could not be paid would lose his federally recognized status (see JAGA 1953/9033, 3 Dec. 1953). The last 23 words of subsection (a) are inserted as a necessary implication of the rule stated in section 309(c) of this title.

In subsection (b), the words “or warrant officer” are omitted, since section 101(9) of this title defines “officer” to include warrant officers. The word “detailed” is substituted for the word “appointed”, since the filling of the positions involved is not appointment to an office in the constitutional sense. The word “commissioned” is inserted after the words “composed of”, since the word “officer” alone, in 32:115, referred to a commissioned officer only (see opinion of the Judge Advocate General of the Army (JAGA 1953/4078, 6 May 1953)). The words “who outrank him” are substituted for the words “senior in rank to the officer under investigation”.